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No. 94-1175

In The

Supreme Court of the United States

OCTOBER TERM, 1994

BANK ONE, CHICAGO, N.A.,

Petitioner,

v.

MIDWEST BANK & TRUST COMPANY,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

SUPPLEMENTAL MEMORANDUM FOR THE PETITIONER PURSUANT TO RULE 15.7

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June 14, 1995

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Petitioner submits this supplemental memorandum in response to the *amicus* brief filed by the Solicitor General.

The Solicitor General recommends that the petition for a writ of certiorari be granted to correct "an implausible construction" of the Expedited Funds Availability Act ("EFA Act"), 12 U.S.C. §§ 4001-4010, "that is likely to impair the statute's remedial objectives." U.S. Br. 7. The government agrees with petitioner that the court of appeals' decision is not only wrong, but "clearly wrong." U.S. Br. 14. As both the government (U.S. Br. 8-9) and petitioner (Pet. 10-11) explain, the court of appeals misread the plain language of the EFA Act. The court of appeals' interpretation of the statute "vest[s] the [Federal Reserve] Board with a highly unusual power" to adjudicate private disputes, contrary to this Court's decision in *Coit Independence Joint Venture v. Federal Savings and Loan Insurance Corp.*, 489 U.S. 561 (1989). U.S. Br. 10. In addition, the court of appeals rejected the agency's reasonable interpretation of the EFA Act in favor of a "highly unusual jurisdictional scheme" that fragments adjudication of check-related claims. U.S. Br. 13.

The government's brief underscores the need for immediate review by this Court. The court of appeals' decision has created serious confusion in the interbank check-clearing system, a complex and interdependent system that is essential to the functioning of the national economy. In 1993, the Federal Reserve Bank of Chicago alone processed more than 2.5 billion checks aggregating more than $1.5 trillion.[1] Although the vast majority of these checks are processed without incident, some inevitably give rise to interbank disputes. Indeed, at least one such dispute has already been dismissed as a result of the court of appeals' ruling in this case. See Pet. 6 & n.4. Thus, the question in this case

[1] Federal Reserve Bank of Chicago, 1993 Annual Report, at 17 (reporting data from Illinois, Indiana, Iowa, Michigan, Minnesota, and Wisconsin).

clearly goes "beyond the academic or the episodic." *Rice v. Sioux City Cemetery*, 349 U.S. 70, 74 (1955).

The court of appeals' decision erroneously denies banks a federal judicial forum for resolution of interbank disputes under the EFA Act, contrary to the clear direction of Congress. Instead, the court of appeals has relegated banks to a non-existent administrative forum. The Federal Reserve has no plans to provide such a forum; indeed, it argues persuasively that it lacks authority to adjudicate interbank disputes. U.S. Br. 11-12.

In sum, immediate review is warranted to correct a clearly erroneous decision that will cause widespread confusion in the national banking system and is likely to impair the objectives of the EFA Act. U.S. Br. 7. This Court's consideration of the straightforward jurisdictional question presented in this case would not be aided by awaiting further development of the issue in the courts of appeals.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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